

**MULTI-FAMILY HOUSING PRESERVATION AND REVITALIZATION
RESTRUCTURING PROGRAM (MPR)**

CONDITIONAL COMMITMENT

[Name and Address of Ownership Entity]

Re: [Name of Project] (the "Project")
[City, County, State]
Existing RHS Case Number: [], Project No.: []
RA contract number(s) [] (the "Existing RA Contracts")
Mortgage Deferral

Dear [Name of Owner Representative]:

The Secretary of United States Department of Agriculture, acting by and through the Rural Housing Service in Rural Development ("Agency") is pleased to offer [Name of Ownership Entity], a [partnership/corporation, as applicable] organized under the laws of the state of [State] (the "Owner"), this Conditional Commitment ("Commitment"), for the Owner's participation in the Rural Development's Multi-Family Housing Preservation and Revitalization Restructuring Program (MPR). [Insert authorizing language.] This Commitment is subject to the terms and conditions set forth below and covers all restructuring authorities that may be offered to the Owner.

RESTRUCTURING TRANSACTIONS

The restructuring transactions ("Transaction") which may be in this offering include the following and are noted as applicable:

A deferral of the existing Agency debt for a term not to exceed 20 years. All terms and conditions of the deferral will be described in the Debt Deferral Agreement executed at closing. (A sample is attached as Exhibit A.) A balloon payment of accrued principal and interest will be due at the end of the deferral period.

Estimated Amount []

A revitalization grant, limited to no more than \$5,000 per unit will be available to fund immediate capital or reserve needs determined by the capital needs assessment process. The grant administration will be in accordance with 7 CFR part 3015.

Amount []

A section 515 rehabilitation loan at zero percent interest that will be amortized over 30 years.

Amount []

A new subordinate 1 percent section 515 rehabilitation loan that will have its interest and principal deferred, to a balloon payment, under the same terms as the longest remaining 515 debt on the property at the time of issuance of the Conditional Commitment. This loan will be subordinate to all other loans secured by the property on the date of Closing. The total principal amount of the senior RHS section 515 loan and the new subordinate loan may exceed the market value of the property. Payment of the new debt will not be required from normal project operation income, but repayment will be required from excess cash after all other secured debts are satisfied. Payment of principal and interest is due at the end of the loan term.

Amount []

A subsequent section 515 loan at one percent that will be amortized over [] years.

Amount []

TERMS AND CONDITIONS:

1. Acceptance of Commitment/Expiration. This Commitment shall automatically expire without further action unless the Owner executes and returns a copy (enclosed) of this Commitment to the Agency within [] calendar days after the date of the authorized Agency official's signature. If the Transaction(s) contemplated by this Commitment is (are) not closed and all conditions herein met to the Agency's satisfaction within [] days from the date this Commitment is executed by the Owner, this Commitment shall, unless extended by the Agency in writing, expire and be of no further force or effect, legal or otherwise.

2. Closing Date. The date when the last Transaction document is executed shall be called the "Closing Date." Subject to paragraph 15 of this Commitment, the Owner and Agency estimate that the Closing Date will be [Estimated Closing Date].

3. Closing Documents. The Owner shall execute such agreements, instruments, certificates and other documents the Agency requires to complete the Transaction (the "Closing Documents"). The Owner shall also comply with closing instructions for the Transaction issued by the Agency. All Closing Documents shall be on forms approved or prescribed by the Agency, and shall be completed, executed, recorded and/or filed in the number of copies and in such manner as directed by the Agency.

4. Project Financial Condition. Unless the Agency gives written instructions otherwise, prior to the Closing Date the Owner shall take all steps necessary to ensure that:

- A. The section 515 loan, in the original principal amount(s) shown in paragraph 20, which is secured by a first lien on the Project (including any modifications or supplements thereto, (the “Deferred Loan”), is and shall remain free from default.
- B. Fire and other property insurance are and shall be maintained in full force and effect.
- C. All ordinary and necessary operating expenses of the Project, as defined in 7 CFR part 3560, are paid.
- D. The Deferred Loan and Project shall be in compliance with all Agency statutory, regulatory, and administrative requirements on the closing date.

Upon request of the Agency, the Owner shall certify in writing that any or all of the foregoing requirements are in compliance.

5. Project Physical Condition. Except as expressly authorized in writing by the Agency, during the period beginning from the date the Owner signs this Commitment through the Closing Date, the Owner shall continue to maintain the physical condition of the Project in accordance with 7 CFR §3560.103 and all applicable regulations and requirements of the Agency, including local codes. Upon request by the Agency, the Owner shall provide a written certification of compliance with 7 CFR §3560.103 in a form satisfactory to the Agency, with respect to this requirement.

6. Restrictive Use Covenant. On the Closing Date, the Owner shall execute and deliver an Agency-approved Restrictive Use Covenant in accordance with 7 CFR §3560.662 which shall include but not be limited to the following provisions:

- A. The Owner must abide by Agency occupancy requirements, as provided in 7 CFR §3560.157, for [] years from the Closing Date (“Use Restriction Period”).
- B. The Owner shall record the Restrictive Use Covenant in the land records for the jurisdiction in which the Project is located and ensure that it is in first lien position, with the exception of any land use restriction agreement (LURA) required by the low income housing tax credit program. The Owner shall obtain such consents, and have such documents executed, as the Agency may determine necessary to establish such priority.
- C. The Project shall be maintained in accordance with 7 CFR part 3560 and all other applicable Agency regulations and requirements, including local codes.
- D. The Owner shall comply with the following civil rights and fair housing requirements: (i) The Fair Housing Amendments Act of 1988; (ii) section 504 of the Rehabilitation Act of 1973; (iii) Title VI of the Civil Rights Act of 1964; (iv) the Age Discrimination Act of 1975; (v) Americans with Disabilities Act of 1990; and (vi) 7 CFR §3560.2.
- E. Failure of the Owner to comply with the terms of the Restrictive Use Covenant shall, at the option of the Agency and in the Agency’s sole and absolute discretion, constitute an Event of Default under the Deferred Loan (the terms of which are described in paragraph 20 hereof).
- F. These provisions must also be binding on the Owner’s successors and assigns.

7. Existing Junior Loans. Any existing loans from any party to Owner (including, without limitation, affiliates of Owner) subordinate to the section 515 loan (Deferred Loan), that are to remain outstanding after the Closing Date (collectively “Existing Junior Loans”), shall be subordinated in all respects to the lien, payment and priority of the Restrictive Use Covenant, all associated Mortgages, Deeds of Trust, other security instruments, and any new RHS loans made under this commitment. On or before the Closing Date, Owner and the holders of the Existing

Junior Loans shall acknowledge the foregoing and execute and deliver one or more subordination agreements satisfactory to the Agency. Notwithstanding the foregoing, nothing contained herein shall relieve Owner of the obligation to obtain all consents, including any consent of the Agency, necessary to accomplish such subordination(s), and this provision shall not constitute such consent.

8. Expenses and Transaction Costs/Sources and Uses of Funds. Except as otherwise set forth in this Commitment and the attachments hereto, all expenses and transaction costs incurred by or at the direction of the Owner in connection with the Transaction (including fees for consultants, attorneys, environmental contractors, tax advisors and accountants; city, county and/or state taxes and/or fees; recording fees, prepayment penalties and/or premiums; costs for title insurance and title examination; surveys and appraisals) shall be paid by the Owner regardless of whether the Transaction is consummated. On the Closing Date, the Owner shall prepare and certify to the Agency, that all the funds from other sources as proposed in the application are available and that there have been no changes in the Sources and Uses described in Exhibit B hereof.

9. Estimated Transaction Costs, Transaction Cost Variances.

A. The costs associated with the Transaction are estimated to total the sum shown in the Exhibit B.

B. In the event that the actual costs associated with the Transaction exceed the estimated amount shown in subparagraph B, the Owner shall be solely responsible for any such excess costs.

C. In the event that the actual costs associated with the Transaction are less than the estimated amount shown in subparagraph B, the Owner agrees that such excess funds shall be applied against the Owner's obligations under the Deferred Loan.

10. Tax, Financial, and Legal Consequences. The Agency has not provided, nor shall provide, any opinions, representations, warranties, or covenants regarding any federal, state and/or local tax consequences, financial consequences, or legal consequences relative to the Transaction. The Owner and all other parties to, or affected by the Transaction are advised by the Agency to consult with their own legal counsel and tax advisers with respect to all such matters. The Owner agrees that it is relying on its own independent determination regarding the tax, financial and legal matters related to this Transaction and not upon any representation made by the Agency.

11. Certifications, Representations and Warranties by Owner. Any certification, representation or warranty delivered by Owner pursuant to this Commitment shall be true and correct when given, and shall remain true and correct at all times through and including the Closing Date. In the event any such certification, representation or warranty is no longer complete or correct, and without limiting the Agency's rights and remedies, the Owner shall immediately provide to the Agency an updated document completing or correcting the certification, representation or warranty.

12. Failure by Owner to Take Required Actions. In the event that Owner fails to take any action, or deliver any information, called for under this Commitment within the time frames contemplated under this Commitment (including any time frames provided under applicable law and regulations, and taking into account any requirements of applicable law and regulations regarding notices and opportunities to cure), the Agency may (without further notice and without offering an additional opportunity to cure) declare that this Commitment is null and void and of no further force or effect.

13. Controlling Provisions; Severability. This Commitment is subject to all applicable law and regulations. In the event of a conflict between the terms and conditions of this Commitment and applicable law or regulations, the applicable law or regulations shall control. Should any provision of this Commitment be held by a court of law to be unenforceable, such determination shall in no way compromise the enforceability of the other provisions.

14. Successors and Assigns. This Commitment and its attachments are binding upon the Owner and upon Owner's successors and assigns. This Commitment may not be assigned by the Owner, in whole or in part, however, except upon the prior written consent of the Agency.

15. Conditions of Closing. This Commitment shall not be effective or enforceable against the Agency until all conditions stated herein have been satisfied which will occur no later than 60 days from the date this Commitment is executed by the Owner.

16. Transfer Approval. Transfer of the Project or any interest therein or related thereto, shall be subject to all Agency statutory, regulatory and administrative requirements and in particular to the requirements of 7 CFR §3560.406. In addition, no transfer shall occur within 60 days prior to the close of the Transaction.

17. Approvals and Decisions by the Agency. This commitment is subject to final Agency approval of the contemplated actions in accordance with all applicable law and regulations. No such approval or decision shall be deemed to have been made unless given in writing and executed by an authorized representative of the Agency. The Agency's execution of the Closing Documents shall constitute any approvals or decisions not previously given in writing.

18. Post-Closing Corrections. Notwithstanding anything to the contrary contained in this Commitment, Owner agrees to execute, before or after the Closing Date, such documents, amendments or modifications as the Agency deems necessary or appropriate to effectuate the intent of this Commitment or to complete or consummate the Transaction, including but not limited to all instruments necessary to correct this Commitment or any of the Closing Documents.

19. Changes to This Commitment. Amounts and other business terms identified in this Commitment are estimates, based on the information readily available at the time this Commitment is signed, and reflect an assumption that the Transaction will close on the Estimated Closing Date. In the event such estimates are later determined to be inaccurate, the parties agree to notify each other and (unless the Agency determines that the Transaction is not economically or practically feasible or otherwise is unacceptable, in which case the Agency may declare this Commitment null and void and of no further force or effect) execute an amendment to this Commitment reflecting the revised estimates. Changes to this Commitment must be signed by the Agency. The final amounts and other business terms shall be determined by the Closing Date and inserted into the applicable Closing Documents. The Owner's execution of the Closing Documents shall constitute the Owner's acceptance of the final amounts and other business terms reflected therein.

20. **Deferred Loan.** On the Closing Date, the Owner and the Agency shall cause the following loan(s) to be deferred:

<u>Date of Loan</u>	<u>Original Principal Amount</u>	<u>Nominal Interest Rate (“Note Rate”)</u>	<u>Maturity Date</u>
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The Owner may not prepay the Deferred Loan(s) without the prior written consent of the Agency.

21. [If there are no additional loans to be made, omit this paragraph]**Additional Loans.** On the Closing Date, the Agency shall make additional section 515 loan(s) to the Owner under the following terms:

<u>Loan Amount</u>	<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Monthly Payment</u>	<u>First Payment to begin on:</u>
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22. [If there is no grant offered, omit this paragraph]**Grants.** On the Closing Date, the Agency shall provide the Owner with a revitalization grant in the amount of \$[] to fund immediate capital or reserve needs. The grant shall be administered in accordance with 7 CFR part 3015.

23. **Owner’s Agreement to Accept Renewals of Rental Assistance Agreements.** The Owner agrees to accept renewals of all existing Rental Assistance Agreements (“RA Contract”), if offered and pursuant to 7 CFR part 3560.

24. **New Basic Rents.** At the Closing Date, the Owner and Agency will execute a written budget providing for monthly Basic rents as follows:

<u>Unit Size</u>	<u>Current Basic Rent</u>	<u>New Basic Rent</u>
[]	[]	[]

Not later than [insert date], the Owner will submit Form RD 3560-7 “Multiple Family Housing Project Budget/Utility Allowance”, dated as of the Closing Date and reflecting the rents referenced above, to the Agency for its approval. Rent changes must be implemented in accordance with 7 CFR part 3560.

25. [If there is no Owner contribution, omit this paragraph.]**Owner’s Contribution.** On or prior to the Closing Date, the Owner shall deliver to the closing escrow agent, in immediately available funds, all costs associated with the Transaction estimated to be \$[].

26. [If there are no immediate repairs required, omit this paragraph.] **Required Repairs and Rehabilitation Reserve Account** The Owner agrees to complete the repairs described in **Exhibit C** (the “Repairs”)

- A. All improvements, repairs, and modifications will be made in accordance 7 CFR part 1924, Subparts A and C.
- B. The Owner agrees to provide the Agency with detailed plans and specifications for undertaking the Repairs and proposed contracts for the Repairs, if applicable.
- C. The Owner agrees to obtain the written approval of the Agency of each such contract prior to entering into such contract, if applicable.
- D. The Owner agrees to provide the Agency with monthly progress reports on the status of the repairs, if requested by the Agency.
- E. Completion of all Repairs shall occur not later than [insert # of months] following the Closing Date.
- F. Failure by the Owner to complete the Repairs in accordance with the Commitment shall constitute a breach of the Commitment.
- G. Failure to complete these repairs in a timely and otherwise satisfactory manner will constitute a failure to maintain the property in accordance with the requirements of 7 CFR §3560.103.
- H. [If there are construction loan proceeds and the construction lender will oversee the repairs add:]Owner agrees to carry out the Repairs to the satisfaction of the Agency and to provide to the Agency a final cost certification audit report as approved by [insert name of construction lender].
- I. [If there are construction loan proceeds and the construction lender will oversee the repairs add:]The Owner agrees to provide the Agency upon completion of all Repairs a dated and signed statement from [insert name of construction lender] certifying the substantial completion of the repairs.

27. **Reserve for Replacements.**

- A. The Agency estimates that the balance in the reserve for replacement accounts on the estimated Closing Date will be \$[insert estimated reserve account balance].
- B. The initial required deposit to the Reserve for Replacements (an interest-bearing account) is to be made on the Closing Date in the amount of \$[]. Beginning on [insert date] and continuing through [insert date], a monthly deposit in the amount of \$[] must be made to the reserve account. Each month after the beginning date, a monthly deposit equal to 1/12th of the annual contribution identified in Attachment D must be made to the reserve account.
- C. [Select one] [If no withdrawals are anticipated:]Through the Closing Date, the Owner agrees not to request, and not to accept, withdrawals from the Reserve for Replacements [OR if withdrawals will be needed obtain the Owner’s agreement not to withdraw funds over and above the agreed amounts]. The Owner represents that the Reserve for Replacements will contain no less than the amount shown in subparagraph A above, as of the Closing Date.
- D. Following the Closing Date, the Owner and the Agency agree that withdrawals from the Reserve for Replacement will be based on actual costs for replacements with respect to those building systems that were included in the capital needs assessment for this Project dated [], which is incorporated by reference, that was used to determine the current monthly deposit. No withdrawals shall be made for items other than actual costs of building system replacements, and no withdrawals

shall be made with respect to building systems that were not included in such capital needs assessment, unless authorized by the Agency.

- E. The Agency periodically, but not more often than every five (5) years, may require the Owner to commission an updated 20-year capital needs assessment, in form and substance acceptable to the Agency. If the Agency accepts the capital needs assessment, the Agency shall approve its cost to be reimbursed from the Reserve for Replacements. If the Agency concludes that the monthly deposit to the Reserve should be adjusted based on the results of the capital needs assessment, the Agency shall require, and the Owner agrees to make, such adjustment.
- F. All replacement reserve account funds shall continue to be held for the benefit of the Project.

28. Property Management Agreement and Certification.

- A. In accordance with the provisions of 7 CFR §3560.102, the Owner must obtain Agency approval of the property management before the date the management agent will assume responsibility for project operations.
- B. Not later than [insert closing date], the Owner agrees to submit to the Agency a Management Certification (RD Form 3560-13) and all its attachments (Management Plan, Previous Participation Certification (RD Form 3560-37), Certification of No Identity of Interest (RD Form 3560-30) or Disclosure and Qualifications of Identity of Interest (RD Form 3560-31), if applicable).
- C. The Management Certification must reflect an initial management fee of \$[insert applicable fee] per occupied unit per month.

29. Fidelity Coverage. Not later than [insert closing date], in accordance with the provisions of 7 CFR §3560.105 the Owner will submit to the Agency evidence that the Owner and property management agent have fidelity insurance coverage that is documented on a bond form acceptable to the Agency.

30. Other Governmental Funds, Subsidy Layering. Not later than 15 days prior to the closing date the Owner agrees to submit to the Agency an updated true and complete Sources and Uses of Funds statement for the Project as described in **Exhibit B** showing all projected sources and uses of funds in sufficient detail to allow the Agency to complete a comprehensive sources and uses evaluation and otherwise acceptable to the Agency.

31. Commitment for Additional Funds. On or before the closing date, the Owner agrees to submit to the Agency evidence of binding commitments of the following funds to be provided for the benefit of the Project. The terms on which such additional funds are being provided must be consistent with the provisions of 7 CFR §3560.66.

[List the source and amount of each additional source of funds.]

32. [Omit if there are no additional special conditions.]Additional Special Terms and Conditions. [If additional terms and conditions are required, insert applicable terms and conditions, numbered as paragraph 32A, B, C, etc. Additional Exhibits may be referenced here as "Exhibit D, E, etc.]

33. Exhibits. The following exhibits are a part of this Commitment, as follows:

- A. Sample Debt Deferral Agreement

- B. Sources and Uses
- C. List of Repairs [or Not Applicable (if no rehabilitation)]
- D. Annual Deposits to the Reserve Account
- E. [Other, if applicable]

34. Entire Commitment; Survival. All prior and contemporaneous oral and written communications are merged herein and superseded hereby, and this Commitment and all exhibits attached constitute the entire agreement between the Owner and the Agency with respect to the Transaction. This Commitment shall survive Closing of the Transaction.

35. Participation in Pilot Program. Participation in this pilot program will not automatically disqualify the Owner from participating in other pilot programs for which the Owner is otherwise eligible.

United States of America acting through and by the
U. S. Department of Agriculture
Rural Housing Service

[Insert Name of RD Official]
[Insert Title of RD Official]
Rural Development

Date: _____

ACCEPTED AND AGREED BY:

[Insert Name of Ownership Entity]

BY: _____
[Insert Name of Owner Representative]
[Insert Title of Representative]

Date: _____

**MULTI-FAMILY HOUSING PRESERVATION AND REVITALIZATION
RESTRUCTURING PROGRAM (MPR)**

DEBT DEFERRAL AGREEMENT (SAMPLE ONLY)

Borrower Name: [] Project Name: []
Borrower Case Number: [] Project Number: [] Loan Number: []
Date Deferral Begins: [] Type of Deferral: []

The United States of America, acting through the Rural Housing Service, in Rural Development, or a successor agency, United States Department of Agriculture (called the "Agency"), is the owner and holder of a promissory note or assumption agreement in the original principal sum of [] and []/Dollars (\$[]), plus interest on the unpaid principal of [] percent ([]%) per year which was made or assumed by [] and [] (called the "Owner"), dated [], and payable to the United States (called the "Loan"). The unpaid principal balance (including advances) is \$[]. The interest due (including interest on advances) to date is \$[]. The late fee to date is \$[]. The total debt to date is \$[].

The Agency agrees to grant the debt deferral of said loan and owner agrees to make payments at the end of the deferral.

The deferral of payments will end on []. A balloon payment of deferred principal and interest will be due at the end of the deferral. The Agency will notify the Owner of the payment amount at least 15 days prior to the end of the deferral period. If there are any further payments due on the loan, the Owner will resume the payments pursuant to the above-described promissory note or assumption agreement after the deferral ends. The final installment of entire debt, which does not change as a result of this deferral, if not paid sooner, will be due and payable on [].

Following the date hereof and until the end of the deferral, periodic payments on the loan shall be required only to the extent surplus cash (as defined in 7 CFR §3560.306 (d) (1)) is generated by Owner through the approved budgeted revenues and expenses for the Project as reflected in the current RD Form 3560-7 "Multiple Family Housing Project Budget". All such periodic payments shall be deposited and distributed pursuant to 7 CFR §3560.306 (d) (2).

Payments of principal and interest shall be applied, and late fee charges shall be assessed in accordance with the Agency's accounting procedure in effect on the date of receipt of the payment. Owner agrees to pay late charges in accordance with regulations of the Agency in effect when a late charge is assessed.

Nothing in this agreement affects any of the terms or conditions of the note or assumption agreement, or the instruments securing it, other than the payment schedule, and the method of applying payments on the account.

Upon default in the payment of any periodic payments or in case of a failure to comply with any of the conditions and agreements contained in the above-described note or assumption agreement or the instruments securing it, the Government at its option may declare the entire debt immediately due and payable and may take any other action authorized therein.

[Insert Owner Entity Name]

BY:

[Insert Name of Owner's Representative]

[Insert Representative's Title]

Date: _____

ATTEST: _____

[Insert Name]

[Insert Title]

United States of America acting by and
through the U. S. Department of
Agriculture

BY:

[Insert Name of Agency Official]

[Insert Title of Agency Official]

Rural Development

Date: _____

SOURCES AND USES

EXHIBIT C

LIST OF REPAIRS